

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:

DAVID AND PANDORA BRITT

DEBTOR.

§
§
§
§
§

CASE NO: 19-42383
(Chapter 13)

ENGs COMMERCIAL FINANCE CO.'S
MOTION FOR RELIEF FROM AUTOMATIC STAY

Notice Pursuant to Local Bankruptcy Rule 4001-1:

YOUR RIGHTS MAY BE AFFECTED BY THE RELIEF SOUGHT IN THIS PLEADING. YOU SHOULD READ THIS PLEADING CAREFULLY AND DISCUSS IT WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. IF YOU OPPOSE THE RELIEF SOUGHT BY THIS PLEADING, YOU MUST FILE A WRITTEN OBJECTION, EXPLAINING THE FACTUAL AND/OR LEGAL BASIS FOR OPPOSING THE RELIEF.

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE SHOWN IN THE CERTIFICATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING WITH APPROPRIATE NOTICE. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

ENGs COMMERCIAL FINANCE CO. ("ENGs"), a secured creditor and party in interest in the above bankruptcy case, files this *Motion for Relief from Automatic Stay* (the "Motion"), and in support thereof, respectfully shows the Court as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter, the parties, and the property affected hereby, pursuant to 28 U.S.C. §§ 157(b) and 1334.
2. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (G), and (O).
3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The basis for the relief requested herein is § 362(d)(1) and (2) of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure 4001 and 9014 and Local Rule 4001 of the United States Bankruptcy Court for the Southern District of Texas.

BACKGROUND

5. On September 2, 2019 (the "Petition Date"), Debtors filed a voluntary petition for relief under Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code"), thereby commencing the above-referenced Chapter 13 bankruptcy case (the "Bankruptcy Case") in this Court.

A. The Commercial Finance Agreement

6. Debtors, David and Pandora Britt, are indebted to ENGS under a Commercial Finance Agreement (the "Contract") with ENGS for the purchase of the following equipment: 2013 Peterbilt, VIN# 1XPHD49XXDD156042 (the "Collateral").

7. ENGS holds a perfected purchase money security interest in the Collateral. A true and correct copy of the Contract and Texas Certificate of Title are attached hereto as Exhibit A and incorporated herein by reference. The ENGS' Affidavit required by Bankruptcy Local Rule 4001-1(b)(4) is attached hereto as Exhibit B and incorporated herein by reference.

8. As of the Petition Date, Debtors are indebted to ENGS in the amount of \$23,729.64. ENGS estimates the value of the collateral to be \$26,100.00. *See* Proof of Claim 1-1.

9. Debtors have failed to schedule the Collateral as a secured claim or provide for it in their Chapter 13 Plan. Curiously, however, Debtors have scheduled ENGS as an unsecured creditor, thereby suggesting that perhaps they sold the Collateral out of Trust.

REQUEST FOR RELIEF

10. Pursuant to sections 105 and 362(d) of the Bankruptcy Code, ENGS seeks an order lifting the automatic stay to allow ENGS to exercise its available legal and contractual remedies, including repossession and foreclosure, of the Collateral.

A. The Automatic Stay Should be Lifted for Cause Pursuant to Section 362(d)(1)

11. The automatic stay should be terminated pursuant to 11 U.S.C. § 362(d)(1) for cause because ENGS does not have adequate protection for the value of its interest in the Collateral. The Collateral is not being administered in the Chapter 13 Plan. Cause also exists to modify any automatic stay applicable to co-Debtor, Pandora Britt.

WHEREFORE, ENGS respectfully requests that this Court enter an order lifting the automatic stay imposed by section 362 of the Bankruptcy Code, and as to any co-Debtor stay applicable to Pandora Britt, waiving the fourteen day stay of such order, and granting such other and further relief to ENGS as this Court deems proper.

Dated: October 1, 2019

Respectfully submitted,

KANE RUSSELL COLEMAN LOGAN PC

By: /s/ Michael P. Ridulfo
Michael P. Ridulfo
State Bar No. 16902020
Federal Bar No. 27086
mridulfo@krcl.com
5051 Westheimer Road, 10th Floor
Houston, Texas 77056
Telephone: (713) 425-7442
Facsimile: (713) 425-7700
ATTORNEYS FOR
ENGs COMMERCIAL FINANCE CO.

CERTIFICATE OF CONFERENCE

On October 1, 2019, counsel for ENGs communicated by e-mail with Debtors' counsel with respect to the issues raised herein. No response was received. On September 30, 2019, the undersigned left a voice message for Debtors counsel. No return call has been received.

/s/ Michael P. Ridulfo
Michael Ridulfo

CERTIFICATE OF SERVICE

This is to certify that on the 2st day of October, 2019, a true and correct copy of the foregoing was served via the Court's CM/ECF notification system on those who have consented to receive electronic notice and by regular mail to those on the attached service list.

/s/ Michael P. Ridulfo
Michael Ridulfo

Label Matrix for local noticing
1540-4
Case 19-42383
Eastern District of Texas
Sherman
Tue Oct 1 14:31:22 CDT 2019

(p) ENGS COMMERCIAL FINANCE CO
PIERCE PLACE SUITE 1100 WEST
TASCA IL 60143-3149

Plano - U. S. Bankruptcy Court
Suite 300B
660 North Central Expressway
Plano, TX 75074-6795

Ally Bank dba Ally Capital Corp
Barrett Daffin Frappier Turner & Engel
1004 Beltline Road, Ste 100
Addison, TX 75001-4320

(p) CITIBANK
PO BOX 790034
ST LOUIS MO 63179-0034

City of Allen
Gay McCall Isaaks Gordon and Roberts PC
1700 Redbud Blvd., Suite 300
McKinney, TX 75069-3276

ENGs Commercial Finance
1441 Warrenville Rd Suite 3210
Alsie IL 60532-3642

Great Lakes Educational Loan
PO Box 790321
St Louis MO 63179-0321

John Deere Financial
PO Box 650215
Dallas TX 75265-0215

Lacys Bankruptcy Dept
PO Box 8053
Lason OH 45040-8053

Allen ISD
Linebarger Goggan Blair & Sampson, LLP
c/o Lisa Large Cockrell
2777 N. Stemmons Freeway
Suite 1000
Dallas, TX 75207-2328

LoanCare, as servicing agent for Pingora Loa
c/o Marinosci & Baxter
Wellington Center
14643 Dallas Pkwy, Suite 750
Dallas, TX 75254-8884

Algonquin Properties LLC
1314 W McDermott Suite 106 404
Allen TX 75013-3021

Attorney General State of Texas
Collections Div Bankruptcy
PO Box 12548
Austin TX 78711 2548

Care Credit Synchrony Bankruptcy
PO Box 965060
Orlando FL 32896-5060

Collin County
Gay McCall Isaaks Gordon and Roberts PC
1700 Redbud Blvd, Suite 300
McKinney, TX 75069-3276

Engs Commercial Finance Co
KANE RUSSELL COLEMAN LOGAN PC
5051 Westheimer Road, 10th Floor
Houston, Texas 77056-5622

IRS CIO
PO Box 7346
Philadelphia PA 19101 7346

Kohls Bankruptcy
PO Box 3004
Milwaukee WI 53201 3004

NTB Citi Cards Bankruptcy
PO Box 20507
Kansas City MO 64195-0507

Ally Bank
c/o BDFTE, LLP
4004 Belt Line Rd Ste. 100
Addison, TX 75001-4320

PRA Receivables Management, LLC
PO Box 41021
Norfolk, VA 23541-1021

Allen ISD
Linebarger Goggan Blair & Sampson
2777 N Stemmons Fwy, Suite 1000
Dallas, TX 75207-2328

BMO Harris Bank NA
PO Box 71951
Chicago IL 60694-1951

Chase Bank Bankruptcy
PO Box 15123
Wilmington DE 19850-5123

Daily Express Inc
PO Box 39
Carlisle PA 17013-0039

Financial Pacific Leasing
3455 S 344th Way Suite 300
Auburn WA 98001-9546

JPMorgan Chase Bank, N.A.
s/b/m/t Chase Bank USA, N.A.
c/o National Bankruptcy Services, LLC
P.O. Box 9013
Addison, Texas 75001-9013

Loan Care LLC
PO Box 8068
Virginia Beach VA 23450-8068

Pingora Loan Servicing LLC
Marinosci & Baxter
14643 Dallas Parkway, ste 750
Dallas, TX 75254-8884

US Attorney General Department of Justice Main Justice Building Fourth and Constitution Ave NW Washington DC 20530-0001	US Attorney General US Department of Justice 950 Pennsylvania Ave NW Washington DC 20530 0001	(p)US BANK PO BOX 5229 CINCINNATI OH 45201-5229
US Department of HUD Title 1 12 Corporate Circle Albany NY 12203-5166	US Trustee Office of the U.S. Trustee 110 N. College Ave. Suite 300 Tyler, TX 75702-7231	United States Attorney Eastern District of Texas 350 Magnolia St Suite 150 Beaumont TX 77701-2254
United States Department of Education Claims Filing Unit PO Box 8973 Madison, WI 53708-8973	Unity One Federal Credit Union 6701 Burlington Blvd Ft Worth TX 76131-2834	Veterans Administration 1400 N Valley Mills Dr Waco TX 76710-4432
Wells Fargo Dealer Services PO Box 29710 Phoenix AZ 85038-9710	Wells Fargo Equipment 600 S 4th St Minneapolis MN 55415-1526	William T Neary, U.S. Trustee Eastern District of Texas 110 N College Suite 300 Tyler TX 75702-7231
Marey D. Ebert P.O. Box 941166 Plano, TX 75094-1166	David Darnell Britt 506 Colgate Drive Allen, TX 75013-2941	Mark S. Rubin Rubin & Associates, P.C. 13601 Preston Rd Suite 500E Dallas, TX 75240-4964
Pandora Henderson Britt 106 Colgate Drive Allen, TX 75013-2941		

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

ENGS COMMERCIAL FINANCE CO. One Pierce Place, Suite 1100 West Itasca, IL 60143	Best Buy PO Box 78009 Phoenix AZ 85062	(d)Engs Commercial Finance Co. One Pierce Place, Suite 1100 West Itasca, IL 60143
--------------------------------------------------------------------------------------	----------------------------------------------	-----------------------------------------------------------------------------------------

US Bank
1065 Wooster Rd
Cincinnati OH 45226

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)PRA Receivables Management LLC
PO Box 41021
Norfolk VA 23541-1021

(d)PRA Receivables Management, LLC
PO Box 41021
Norfolk, VA 23541-1021

End of Label Matrix	
Mailable recipients	48
Bypassed recipients	2
Total	50